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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

JAMSHID DANESHVAR,
Petitioner,

v.

UNIVERSITY OF WEST VIRGINIA
BOARD OF TRUSTEES,
Respondent.

Petition for Writ of Certiorari to the Supreme Court of Appeals of West Virginia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, in a hearing to determine whether a student should be expelled from a state-operated dental school for alleged cheating, the admission into evidence, over the objections of the accused, of an article entitled "Message to Students: If You Have a Lawyer Handy, Go Ahead and Cheat Like Crazy," published in the Chronicle of Higher Education, which article, on its face, demonstrated contempt for the principles of due process, was so prejudicial as to contaminate the entire hearing process, resulting in the denial of the accused student's right to a hearing by a fair and impartial tribunal.

2. Whether a public educational institution deprives an accused student of due process of law when the president, in whom is vested the ultimate power to expel the student, delegates his fact-finding and decision-making powers to his general counsel, who in all respects had acted as prosecutor in preparing and presenting the case against the student.

3. Whether petitioner was deprived of a valuable property right without due process of law, where respondent violated its own institutional rules and regulations by ignoring a requirement that the disciplinary committee hearing petitioner's case comprise five (5) members, including two (2) student members, and, instead, required that petitioner's case be heard by a committee comprising only three (3) members, just one (1) of whom was a student.

4. Whether the denial by the hearing committee of petitioner's request to conduct voir dire examination of its members in an attempt to ensure fairness and impartiality constituted a denial of due process of law.

5. Whether the omission from the institutional regulations of a provision requiring each person sitting in judgement of petitioner to subscribe to an oath assuring such person's lack of bias and prejudice, as well as such person's adherence to a duty of fairness and impartiality in considering evidence and rendering a decision, deprived petitioner of due process of law where the disciplinary committee, having subscribed to no such oath, recommended that petitioner be expelled from the school of dentistry.

6. Whether the cumulative effect of the consideration by the disciplinary committee of hearsay and other inadmissible and highly prejudicial testimony and documents, over the objections of peti-

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tioner, resulted in the respondent's denial of petitioner's right to due process of law.

PARTIES TO THE PROCEEDING

The names of all parties to this proceeding appear in the caption of the case.

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UNIVERSITY OF WEST VIRGINIA
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Petition for Writ of Certiorari to the Supreme Court of Appeals of West Virginia

PETITION FOR WRIT OF CERTIORARI

Petitioner Jamshid Daneshvar respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Appeals of West Virginia in this case.

OPINIONS BELOW

The judgment of the state supreme court (App., infra, p. la), refusing without hearing or opinion petitioner's petition for writ of certiorari below, is not reported. The opinion of the state circuit court (App., infra, p. 2a) is unreported.

JURISDICTION

The judgment of the state court was entered on February 16, 1994. The jurisdiction of this court is invoked pursuant to 28 U.S.C.

Section 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides in pertinent part as follows: "...nor shall any State deprive any person of life, liberty, or property, without due process of law..."

STATEMENT OF THE CASE

1. Petitioner was a second-year student at the West Virginia University School of Dentistry, an educational institution operated by respondent. In May, 1991 he was accused of presenting false and incomplete data or intentionally misrepresenting his record for admission; making false statements to the associate dean concerning his former status at another dental school and the reasons for his leaving that school; and giving false testimony under oath. He was given notice of a disciplinary hearing on the charges.

2. A hearing on the charges was held on August 22, 1991 before the university's Committee on Student Rights and Responsibilities. Petitioner was represented by counsel, and the university's associate general counsel acted as prosecutor throughout the proceedings.

3. Despite timely objections by petitioner's counsel, as more fully hereinafter set forth, numerous due process violations occurred during the hearing, including, but not limited to, the following: (1) the introduction into evidence by the university's counsel, over the objections of petitioner's counsel, of an article from The Chronicle of Higher Education entitled "Message to Students: If You Have a Lawyer Handy, Go Ahead and Cheat Like Crazy;" (2) a determination by the members of the hearing committee that such article was relevant; (3) the conflicting roles played by the university's associate general counsel, in acting as prosecutor, and his immediate superior, the general counsel, acting as both advisor to the hearing panel and as the university president's designee to decide the case; (4) the university's selection of a three-person hearing panel in contravention of its own rules and written representations made to petitioner's counsel; (5) the university's refusal to permit petitioner's counsel to

voir dire the panel: and (6) the failure to administer an oath to the panel to attempt to ensure that its members adhered to their duty to be fair and impartial.

4. The committee concluded that petitioner had committed "violation[s] of academic dishonesty" and recommended to the president that petitioner be dismissed from the School of Dentistry.

5. The university president, acting through his designee, the general counsel, found that the hearing had been fair and proper, and that petitioner was guilty and should be expelled. By order of the president on May 4, 1992, petitioner was expelled from the School of Dentistry.

6. On August 6, 1992, petitioner sought a writ of certiorari in the Circuit Court of Kanawha County, West Virginia, alleging due process violations. As of July 3, 1993, the circuit judge to whom the case was assigned, A. Andrew MacQueen, had taken no action in the case and petitioner sought a writ of mandamus from the West Virginia Supreme Court of Appeals. A rule to show cause issued, returnable September 14, 1993.

7. On August 27, 1993, Judge MacQueen entered a two-page order adopting the committee's findings of fact and conclusions of law and affirming the expulsion of petitioner, holding that the president's decision was "not plainly wrong." App., infra, pp. 2a, 3a.

8. Petitioner appealed Judge MacQueen's decision to the West Virginia Supreme Court of Appeals, which refused the appeal petition. App., infra, p. 4a.

9. As of the date of the hearing, the West Virginia University Code of Student Rights and Responsibilities contained the following provisions, among others, relating to the composition and duties of the university Committee on Student Rights and Responsibilities:

> 1.4 (18)University Committee on Student Rights and Responsibilities. - A body composed of students and faculty selected on a University - wide basis to administer this Code and from which a small group will be assigned, on a rotating basis as a panel, to hear and decide cases of breach of the code of Conduct. Cases will come to this committee on both the original and appellate basis.
>
> (19) Hearing Panel. --Composed of those se-

lected members of the University Committee on Student Rights and Responsibilities selected to sit on a specific case and render a decision on behalf of the committee.

1.5 The [Committee] may have original or appellate jurisdiction of cases involving the alleged violation of the University student conduct code. ... The jurisdiction and authority of the [Committee] shall be, in cases of disciplinary action or academic sanctions against students or alleged academic dishonesty:

a. To convene the hearing panel from its membership;

b. To summon the accused and witnesses and to hear evidence;

c. To make findings of fact from the evidence presented;

d. To determine the sanctions, if any, to be applied;

e. To refer a case to a lesser body, where appropriate.

10. The Committee comprised six faculty members and five students. Section 1.5.1. of the Code sets forth the following provisions as to the composition of the hearing panel:

> From the [Committee] a panel of a minimum of three persons, but always an odd number, will hear each case sent before the Committee. Membership on the panels will rotate among the eleven members. Each panel shall consist of a faculty majority and at least one student. Prior to the hearing, students appearing before the panel will have the opportunity to review a list of the panel members with the Office of Judicial Programs, to assure an unbiased panel. Each party will be given an opportunity to strike a maximum of two members from the [Committee]. In all cases, the decision of a majority of the committee or panel shall be the decision of the committee.

11. Prior to the hearing, petitioner's counsel had been advised

by the committee's chairman that he would be given the opportunity to conduct a voir dire examination of prospective members of the panel, and that he would have the right to strike two members; however, on the day of the hearing only three committee members appeared, and, over the objections of counsel for petitioner, they were impaneled to hear the case. App., infra, pp. 19a-20a. Petitioner's motion to voir dire the members of the hearing panel was denied. App., infra, p. 20a.

12. At the time the members were impaneled, the only attempt by the chairman to ensure a fair and impartial tribunal was to elicit negative responses from the other two members and himself to a single question: "Do you have any prior knowledge about the student charged which will impair your ability to render an impartial decision?" No questions relating to possible conflicts of interest, personal opinions or biases, the members' interests in pleasing the university administration, or other subjects normally the basis for inquiry were permitted; nor was any oath administered to the panel to ensure that they were reminded of their solemn duty of fairness to the accused.

13. Prior to the hearing, the associate general counsel tendered as an exhibit an article appearing in the May 15, 1991 edition of The Chronicle of Higher Education entitled "Message to Students: 'If You Have a Lawyer Handy, Go Ahead and Cheat Like Crazy.'" Over the objections of petitioner's counsel, the article was admitted into evidence. App., infra, pp. 11a-12a.

14. On its face, the article reveals the professor-author's contempt for the procedural safeguards to which colleges and universities are expected to adhere when accused students face disciplinary proceedings. The author exclaims that he was "appalled that he was being asked to defend his judgment to a university lawyer" after having accused a student of cheating on an exam.

15. The author denounced his university's administration as being "timorous" in not supporting his accusations and, as an act of revenge after withdrawing the charges, gave the student an "A+" despite an exam score equivalent to a "C."

16. The author further characterized the proceedings at his university as a "travesty" and concluded that there was a moral for students: if you have a lawyer handy, go ahead and cheat like crazy.

17. The article was proffered by the associate general counsel,

who was acting in the role of prosecutor on behalf of the School of Dentistry, and was objected to as being highly prejudicial to the rights of petitioner.

18. During the course of the proceedings against petitioner the university's associate general counsel carried out the following acts and functions, among others, over timely objections of petitioner's counsel:

a. Served as an advisor to the Dean's office in the School of Dentistry;
b. Assisted in the preparation of the formal charges against petitioner;
c. Interviewed witnesses and gathered exhibits in preparing the case to be presented against petitioner at the formal hearing;
d. Argued motions on behalf of the School of Dentistry in opposition to petitioner;
e. Made an opening statement; called witnesses; tendered exhibits; cross-examined the accused and his witnesses; and made a closing argument; and
f. Generally carried out the same functions and duties a prosecutor performs in the trial of any criminal case.

19. Following the hearing panel's decision and the transmittal of its recommendations to the president, petitioner's counsel moved to have the president set aside the panel's decision and award him a new hearing, citing various errors in the proceedings. App., infra, pp. 18a-25a. The university's associate general counsel filed a brief in response to the motion.

20. When the case arrived in the president's office for final disposition, the president delegated that authority to the general counsel, who then proceeded to adopt the findings and arguments that had been advanced by his subordinate, the associate general counsel, throughout the hearing and post-hearing process. App., infra, 4a-17a.

21. These acts were carried out despite the following provisions of the student code, which on their face serve to insulate the presi-

dent, as the official who must ultimately determine the sanctions against the accused student, from the prosecutorial functions which are executed during the hearing below, by requiring the university to hire outside counsel, as opposed to having the president's own lawyers prosecute the case:

> 2.4.5. Procedural Standards in Disciplinary Proceedings.
>
> ...
>
> d. In cases involving the potential for suspension or expulsion, legal counsel may be present. Legal counsel may serve in an advisory capacity to the accused student at the student's own expense... The college or university may request legal counsel through the Office of the Chancellor. Counsel retained by the University may participate... [Emphasis added].

22. The record in this case is devoid of any such request through the office of the chancellor; to the contrary, the record is clear that the general counsel's office, which is an arm of the president, supplied legal counsel from its own staff.

23. There is no provision of the student code which allows the president to delegate his final decision-making authority to the same office which has prosecuted the case and advised the hearing committee; nor can statutory authority be found for such a practice.

24. In the course of the proceedings against petitioner, the following further acts and omissions occurred:

> a. Allowing hearsay testimony by the associate dean as to a telephone conversation he held with a school official in Ohio during a recess in the hearing, thus effectively depriving petitioner of the right to cross-examine the individual;
>
> b. Allowing a medical school official to testify as to punishment administered more than a decade ago to a medical student who had been accused of falsifying his application;
>
> c. The introduction into evidence of unauthenticated documents on their faces containing hearsay comments

highly prejudicial to petitioner;

d. The refusal to give instructions offered by counsel for petitioner that were designed to ensure, to the greatest extent possible, that the committee would attempt to consider the case in a fair and impartial manner;

e. The finding of violations of academic dishonesty despite the lack of clear and convincing evidence to support such a finding.

25. In each of the foregoing respects, respondent, acting by and through West Virginia University and its executive officers and counsel, violated its own rules and regulations and, in so doing, deprived petitioner of due process of law in expelling him from said institution. Petitioner's trial counsel raised these issues at each level of the proceedings, commencing with pre-hearing motions, and renewing them in his motion to set aside and his petitions for certiorari below.

REASONS FOR GRANTING THE WRIT

The procedural safeguards protecting an accused student at a state-operated institution of higher learning were developed largely through case law in the 1970s. Goss v. Lopez, 419 U.S. 565 (1975); North v. W.Va. Board of Regents, 160 W.Va. 248, 233 S.E.2d 411 (1977).

West Virginia University has embraced the principles of due process in the form of its Code of Student Rights and Responsibilities, supra, in the wake of the North and Goss holdings; yet this case presents what may be a matter of first impression: what happens when the institution clothes the proceedings with all the appearances of a full-blown criminal trial, with everything from an aggressive prosecutor to a court reporter and rulings on evidence, but fails to follow some of the most fundamental tenets in conducting such proceedings?

In this case, the role played by the university's associate general counsel would have been appropriate had it ended at the hearing; instead, his office had delegated to it an additional role: that of deciding the case for the president. App., infra, p. 17a. A reading of the president's decision, in the light of knowing that it was written in the office of general counsel, leaves little room for denying that the prosecutor was also acting as judge and jury.

The prosecutor's successful effort to have admitted into evidence the article entitled "Message to Students: If You Have a Lawyer Handy, Go Ahead and Cheat Like Crazy" introduced a poison into the proceedings. The Chronicle of Higher Education is indisputably one of the most highly-respected and widely-read periodicals to be found in faculty offices at colleges and universities in this country. The finding by the members of the hearing panel that this article, which glorifies the author's contempt for even the most basic notions of due process, was "relevant" is, on its face, evidence of an anti-accused bias on the part of the panel.

The concern regarding the possible bias of the hearing panel was expressed in a timely way by petitioner's trial counsel prior to the hearing, as well as at every post-hearing and appellate level. App., infra, pp.27a, 28a, 29a. Nonetheless, the university violated its own rules and regulations and seated a three-person panel in lieu of the required five, and then overruled petitioner's efforts to ascertain

whether there was any bias or prejudice on the part of the panel's members. Trial counsel's efforts to voir dire the panel were timely and well-documented at every level of the proceedings below. App., infra, pp. 7a, 29a. Voir dire is essential to enable litigants to select a jury composed of men and women qualified and competent to judge and determine the facts in issue without bias, prejudice, or partiality. Murphy v. Lindahl, 24 Ill. App. 2d 461, 165 N.E.2d 340 (1960); Crawford v. Bounds, 395 F. 2d 297 (1968).

While any one of the various other irregularities which occurred at the hearing, standing alone, might not be of sufficient gravity to warrant reversal, their cumulative effect is of such magnitude as to compel the vacating of the judgment.

All of the foregoing facts and issues present federal questions of due process which have been fairly raised in the proceedings below; however, the record thus far is devoid of meaningful judicial review and disposition. The two courts below disposed of the case without hearing argument and without rendering any opinion of substance. The only findings of fact and conclusions of law which appear to have been made in this case are those made by the office which, in the first instance, prosecuted the charges against petitioner. We respectfully submit that due process demands much more from our system of justice.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted.

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Counsel for Petitioner
May 16, 1994

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 16th day of February, 1994, the following order was made and entered:

Jamshid Daneshvar, Plaintiff Below,
Petitioner

vs.) No. 931685

University of West Virginia, Board
of Trustees, Defendant Below, Respondent

On a former day, to-wit, November 8, 1993, came the petitioner, Jamshid Daneshvar, by Solomon & Solomon, and David L. Solomon, his attorneys, and presented to the Court his petition praying for an appeal from a judgment of the Circuit Court of Kanawha County, rendered on the 30th day of August, 1993, with the record therein accompanying the petition, which being seen and inspected by the Court is hereby refused.

A True Copy

Attest: /s/ Ancil H. Ramsey
Clerk, Supreme Court of Appeals

IN THE CIRCUIT COURT OF
KANAWHA COUNTY, WEST VIRGINIA

JAMSHID DANESHVAR,
Petitioner,

v. Civil Action No. 92-MISC-432

UNIVERSITY OF WEST VIRGINIA
BOARD OF TRUSTEES,
Respondents,

ORDER

This matter is before this Court for judicial review pursuant to West Virginia Code 53-2-1, et. seq., as amended.

By decision dated May 4, 1992, a decision was rendered by the Office of the President of West Virginia University sustaining a previous decision of the Committee on Student Rights and Responsibilities dismissing the Petitioner from the West Virginia University School of Dentistry. The dismissal was predicated upon a finding that the Petitioner testified under oath that he had not been previously accused of cheating and that this finding warranted dismissal for academic dishonesty under Section 3.1.1.3.3f and Section 2.3.1.a.2 of the West Virginia Code of Student Rights and Responsibilities.

After a thorough consideration and review of the record and all assignments of error set forth in the Petition in this matter, this Court concludes that the decision of the Office of the President dated May 4, 1992, dismissing the Petitioner from the West Virginia University School of Dentistry is not plainly wrong with respect to the facts of this case and that the questions of law presented were decided correctly. In reaching this decision, this Court has made the requisite "independent review" of the record and has not merely adopted in a mechanistic manner the findings of fact and conclusions of law made by the Committee on Student Rights and Responsibilities and the Office of the President. See, South Side Lumber Co. v. Stone Construction Co., 151 W.Va. 439, 152 S.E. 2d 721 (1967). Therefore, this Court adopts as its own the findings of fact and conclusions of

law made by the Committee On Student Rights and Responsibilities and the Office of the President. See, Harrison v. Ginsberg, ___ W.Va. ___, 286 S.E. 2d 276 (1982); Golden v. Board of Education, ___ W.Va. ___, 285 S.E. 2d 665 (1981).

Accordingly, this Court does hereby ORDER that the decision of the Office of the President dated May 4, 1992, dismissing the Petitioner from the West Virginia School of Dentistry for academic dishonesty be and the same is hereby affirmed.

This Court does hereby further ORDER that a certified copy of this Final Order be sent to all parties or counsel of record. The Court notes the objection and exception of the party or parties aggrieved by this Final Order.

This Court does further ORDER that this matter be and the same is hereby dismissed and stricken from the docket of this Court.

Enter this 24th day of August , 1993
/s/ A. Andrew MacQueen
Chief Judge

PENDING IN THE OFFICE OF THE PRESIDENT
WEST VIRGINIA UNIVERSITY

IN RE: JAMSHID DANESHVAR; APPEAL OF ACADEMIC DISMISSAL. FROM THE WEST VIRGINIA UNIVERSITY SCHOOL OF DENTISTRY

A hearing panel of the Committee on Student Rights and Responsibilities met on August 22, 1991 to hear the appeal of West Virginia University School of Dentistry Dean W.R. Biddington's decision to expel and academically dismiss Jamshid Daneshvar from the West Virginia University School of Dentistry. After hearing the evidence, the Committee on Student Rights and Responsibilities unanimously determined the following Findings of Fact:

1) Mr. Daneshvar presented false and incomplete data for admission to the West Virginia University School of Dentistry. (However the Committee stated that it "cannot find that this was done so intentionally.")
2) There was not clear and convincing evidence that Mr. Daneshvar furnished false statements to Associate Dean McCutchen on April 23, 1991, and
3) Mr. Daneshvar did testify under oath that he had not been accused of cheating previously.

The unanimous Conclusions of the Panel were that:
1) Finding of Fact #1 was a violation of academic dishonesty under section 3.1.1.3.3.c of the West Virginia University Code of Student Rights and Responsibilities (hereinafter referred to as Student Code).
2) Finding of Fact #3, as referenced above, constituted a violation of academic dishonesty under section 3.1.1.3.3.f and academic dishonesty as described in section 2.3.1.a.2 of the Student Code.

The hearing committee on Student Rights and Responsibilities then levied sanctions against Mr. Daneshvar as flows:
1) Probation for one academic year for academic dishonesty (Finding of fact #1), pursuant to section 3.1.1.3.3.c of the Student Code,
2) Academic dismissal from the West Virginia University School of Dentistry for academic dishonesty (stemming from Finding of Fact

#3 referenced above) pursuant to section 3.1.1.3.3.f of the Student Code.

The sanction of academic dismissal has been appealed to the office of the President of West Virginia University. Mr. Daneshvar has also filed a motion to "...Set Aside the Decision of the Committee and Award Another Hearing, or In the Alternative, Reinstate Him To His Former Position," which includes specific assignments of error allegedly made by the hearing panel of the Committee on Student Rights and Responsibilities. This office has a transcript of the hearing held on August 22, 1991, as well as all pertinent documents and materials made a part of the official record in this matter. What follows is a point-by-point finding as to each of the assignments of error claimed by Mr. Daneshvar's attorney, which is followed by Conclusion with specific rulings. Unless otherwise indicated, each reference to the "hearing," "hearing panel," or to the "hearing committee" is directed to the Committee on Student Rights and Responsibilities, which met on August 22, 1991.

1) Mr. Daneshvar claims that Dr. W.R. McCutchen, Associate Dean of the School of Dentistry, violated his rights when he had Mr. Daneshvar sign an authorization to obtain the release of academic records.

Dr. McCutchen's own uncontradicted testimony was that he had discovered, through dentistry school students, that Mr. Daneshvar had been enrolled at another school of dentistry before enrolling at WVU's School of Dentistry and that there was concern Mr. Daneshvar had been expelled from the previous school of dentistry for academic dishonesty. Dr. McCutchen testified that he asked Mr. Daneshvar to sign a release to allow him to obtain records from the dental school Mr. Daneshvar previously attended. Mr. Daneshvar testified in part that he voluntarily signed the release when asked to do so by Dr. McCutchen. Although there may be some conflict in the testimony, it is reasonable for the hearing committee to have concluded as a matter of fact that Mr. Daneshvar voluntarily signed a release of records.

Given the fact the School of Dentistry discovered that Mr. Daneshvar had apparently attended another dental school prior to attending the WVU School of Dentistry, coupled with the fact that his application form at the WVU School of Dentistry indicated that

he had not attended a similar prior institution, the WVU School of Dentistry had not only the right, but also the obligation to obtain records from the institution previously attended by Mr. Daneshvar. Mr. Daneshvar's assignment of error #1 is denied.

2) Mr. Daneshvar claims that he was denied his "valuable right to be represented by counsel" at his Second Year Academic Standards Committee hearing. (This was a hearing held at the WVU School of Dentistry. The Committee on Student Rights and Responsibilities hearing which this office is reviewing was an appeal by Mr. Daneshvar from the decision of the Second Year Academic Standards Committee.) Mr. Daneshvar further claims that Dr. Overberger refused to grant Mr. Daneshvar a hearing postponement and that the Second Year Academic Standards Committee at the WVU School of Dentistry met without Mr. Daneshvar or his attorney present.

A review of the hearing transcript and the documents submitted into evidence at the Committee on Student Rights and Responsibilities hearing, reveals something quite different than what is claimed by Mr. Daneshvar's attorney in his assignment of error.

The original date of the Second Year Academic Standards Committee hearing was not the May 27, 1991 date referenced in Mr. Daneshvar's assignment of error. From a review of the transcript, it is apparent that it would be reasonable for the hearing committee to find as a matter of fact that the originally scheduled date of the Second Year Academic Standards Committee hearing was May 14, 1991 and that such date was postponed and changed at the request of Mr. Daneshvar to a later (May 22, 1991). Apparently Mr. Daneshvar did not object to this later date until literally the evening before the hearing was to take place. Dr. Overberger testified that the second request for postponement was denied.

It is not apparent why Mr. Daneshvar's attorney has failed to include all the facts surrounding the postponement and rescheduling of the Second Year Academic Standards Committee hearing. Regardless of the reason for such discrepancy in Mr. Daneshvar's assigned error, there can be no relief granted to Mr. Daneshvar on the basis of assigned error.

#2 Mr. Daneshvar had no "right" to an attorney at the Second Year Academic Standards Committee hearing. In addition, Dr. Overberger had granted one request for a postponement of the hearing date and

it was certainly within the Second Year Academic Standards Committee's discretion whether to grant a second such postponement when it was presented at such a late hour. Mr. Daneshvar's assignment of error #2 is denied.

3) Mr. Daneshvar's assignment of error #3 contends that the hearing committee should have consisted of five persons and that Mr. Daneshvar was denied the "right" to voir dire members of the Committee.

Mr. Daneshvar's attorney argues that section 1.5.1 of the Student Code entitled Mr. Daneshvar to a five person committee at the time of his hearing on August 22, 1991. Once again, it is not clear why Mr. Daneshvar's attorney argues this particular point when a reading of section 1.5.1 of the Student Code clearly indicates that panels such as the one hearing Mr. Daneshvar's matter must consist of "a minimum of three persons but always an odd number." The argument advanced by Mr. Daneshvar's attorney is incorrect and the assignment of error as it pertains to the right to a five person committee is denied.

Mr. Daneshvar's attorney also argues that Mr. Daneshvar was entitled to voir dire the hearing committee members and cites the West Virginia Supreme Court case of North v. Board of Regents 332 SE 2nd 141 as precedent for this argument.

The above-cited North case does not mandate that Mr. Daneshvar is entitled to voir dire the committee members. The WVU hearing panel in North permitted voir dire of committee members as a discretionary function of the committee there seated. The committee in the North case would not have been compelled by law to allow voir dire of the hearing panel if it had not chosen to do so. In Mr. Daneshvar's case, the committee chose not to allow voir dire, but Mr. Daneshvar's rights to due process were nonetheless adequately protected in many ways. For instance, as cited above, Mr. Daneshvar was allowed to have counsel represent him at the hearing; a discretionary choice made by the hearing committee which was not mandated by the Student Code. Also, Mr. Daneshvar has been afforded the opportunity to pursue several levels of appeal. There is nothing in the record which indicated that Mr. Daneshvar was treated incorrectly or denied any rights of due process. Mr. Daneshvar's counsel has indicated no reason why any of the panel members hearing Mr.

Daneshvar's case should have been disqualified from participating on the panel. In summary, neither West Virginia law or WVU policy grants an absolute right of voir dire to students appearing before hearing committees such as the one convened on August 22, 1991. Mr. Daneshvar's assignment of error as it related to the right to voir dire is denied.

4) Mr. Daneshvar argues as an assignment of error that there were inconsistent and erroneous charges brought against him by Dean Biddington in a May 7, 1991 letter and by Dean Sloane on August 14, 1991, and that thus Mr. Daneshvar was tried on incompatible charges. Mr. Daneshvar also argues that the penalty of academic dismissal is inconsistent with the Student Code and should not be allowed to stand.

A review of the record reveals that Mr. Daneshvar's charges were not inconsistent nor were they erroneous. Mr. Daneshvar's assignment of error concerning inconsistent charges is denied. Assuming, for the sake of argument, that there were inconsistent charges, the Student Code provides that in some cases of "...forgery, misrepresentation or fraud, such matters may be referred directly to the University Committee on Student Rights and Responsibilities by any member of the University community." See section 3.5.1.6 of the Student Code. The charges against Mr. Daneshvar could arguably be brought directly to the Committee on Student Rights and Responsibilities by any member of the University community under the provisions of the Student Code just cited.

A student who fails to meet academic requirements or standards, including those for academic honesty as defined by the University and/or its constituent colleges and schools, may receive sanctions as severe as academic dismissal. See section 3.4.1 and 3.4.3 of the Student Code. The accusation of lying under oath at a University hearing falls within the definition of academic dishonesty under section 3.1.1.3 of the Student Code. Therefore, the sanction of academic dismissal is not improper in relation to the charge of academic dishonesty. Mr. Daneshvar's assignment of error concerning the impropriety of the sanction of academic dismissal is denied.

5) Mr. Daneshvar assigns as a point of error that Attorney Daniel Vannoy, representing the School of Dentistry, presented an atmosphere of hostility and animosity and that Attorney Vannoy belittled

Mr. Daneshvar's counsel and prejudiced the committee in several ways. Mr. Daneshvar's attorney argues eight ways in which Mr. Vannoy prejudiced the Committee against Mr. Daneshvar. Each of these is considered below in the order they were presented in Mr. Daneshvar's Motion to Set Aside the Decision of the Hearing Committee.

a) Mr. Daneshvar claims as error the fact that Attorney Vannoy called John Erdeljac to testify at the hearing.

Mr. Erdeljac provided evidence concerning how Mr. Daneshvar came to be identified as having previously attended another dental school and why it was important for the School of Dentistry to know whether an applicant had or had not cheated in the past.

There is nothing improper about Mr. Erdeljac's testimony. The hearing committee had a right to know how the School of Dentistry came to learn about Mr. Daneshvar's previous attendance at another dental school and how they had found out about previous allegations of cheating against Mr. Daneshvar at the other school. Given his student status, Mr. Erdeljac's testimony concerning the importance of the School of Dentistry knowing whether an applicant cheated or not may have been of limited relevance, but the hearing committee was not prohibited from hearing such testimony. Mr. Daneshvar's assignment of error as to the Erdeljac testimony is denied.

b) Mr. Daneshvar assigns as a point of error the testimony of Dr. Todd Lewis.

Dr. Lewis's testimony was similar to Mr. Erdeljac's. Again, there is nothing improper about such testimony. It is important to note that administrative procedures such as the one in which Mr. Daneshvar participated on August 22, 1991, are not governed by formal rules of evidence. See section 3.5.2.6.3 of the Student Code. Information which the hearing committee deems relevant in some manner, may be examined by the committee if it so chooses. Mr. Daneshvar's assignment of error as it relates to the testimony of Dr. Lewis is denied.

c) Mr. Daneshvar contends that the testimony of Rodney Powers was also improper.

Dr. Rodney Powers testified further as to the facts concerning how the information about the previous dental school was

made known to the WVU School of Dentistry. As stated above, this testimony was not improper. Mr. Daneshvar's assignment of error concerning Dr. Rodney Powers is denied.

d) Mr. Daneshvar assigns as a point of error the fact that Dr. William McCutchen was allowed to testify, to interpret, and to give his opinion on various documents which should "speak for themselves" and should have been interpreted by the committee.

As referenced above in subparagraph (b), the hearing committee is not bound by the formal rules of evidence. Mr. Daneshvar's attorney is making a formal evidentiary-type objection which is not proper in an administrative setting. Mr. Daneshvar's assignment of error as to the testimony of Dr. McCutchen is denied.

e) Mr. Daneshvar assigns as points of error the testimony of Dr. Overberger and arguments made by Mr. Vannoy in response to Attorney Solomon's objections.

A review of the hearing transcript reveals nothing improper about the testimony of Dr. Overberger and the assignment of error as to Dr. Overberger's testimony is denied.

At the August 22, 1991 hearing, there was an extended argument concerning a point of evidence to which Attorney Solomon had objected which ended with Mr. Vannoy being allowed to ask a particular question. A review of the hearing transcript reveals no prejudice to Mr. Daneshvar's case by the argument presented before the committee by Attorney Vannoy. Such assignment of error is denied.

Mr. Daneshvar also makes a claim that Dr. Overberger arbitrarily scheduled the Second Year Academic Standards Committee hearing for May 22, 1991. A review of the record indicates that as a factual matter, the hearing committee on August 22, 1991 could reasonable conclude that Dr. Overberger properly exercised his discretion in the scheduling of the Second Year Academic Standards Committee hearing. Mr. Daneshvar's assignment of error as to the scheduling of such hearing is denied.

f) Mr. Daneshvar assigns as a point of error the fact that Dr. David Morgan testified concerning the appropriateness of punishment for academic dishonesty and that Dr. Morgan also testified about the sanctions which were levied in the North case.

The thrust of Dr. Morgan's testimony apparently was concerned with the propriety of the sanction in regard to the offense of academic dishonesty and how professional schools should deal with people of questionable integrity and character. Once again, Mr. Daneshvar's attorney misses the point by making formal evidentiary objections which are not proper in this setting. Mr. Daneshvar's attorney should have directed his arguments to the weight of the evidence rather than where the evidence is admissible. Stated another way, Mr. Daneshvar's attorney should have attacked the validity of such evidence in cross examination and closing argument rather than in legalistic formal evidentiary objections. Mr. Daneshvar's assignment of error as to Dr. Morgan's testimony is denied.

g) Mr. Daneshvar assigns as a point of error the fact that Dr. William McCutchen testified as to the appropriateness of the sanctions imposed by Dean Biddington.

There was nothing improper in such testimony and the hearing committee was well within its discretion in hearing such evidence. As stated above, any argument concerning Dr. McCuthcen's testimony would be one of the weight of the testimony rather that the admissibility.

h) Mr. Daneshvar makes a general assignment of error concerning Dr. Overberger, Dr. McCutchen, and R. Morgan and their testimony as to the appropriateness of sanctions.

As has been repeated above, such an objection to this testimony would go to the weight of the evidence rather than its admissibility. The committee could properly hear the testimony of the three doctors and assign whatever weight it wished to such testimony. This general assignment of error is denied.

6) Mr. Daneshvar assigns as points of error the facts that hearsay documents were introduced into evidence and that an article from the Chronicle of Higher Education was admitted improperly into evidence.

As stated above, the committee hearing Mr. Daneshvar's case on August 22, 1991 was not bound by formal rules of evidence and, therefore, it was proper for them to admit documents into evidence which were relevant in some fashion to the matter before them. Clearly, documents purporting to be from the previous dental school

which Mr. Daneshvar attended were relevant. Mr. Daneshvar's attorney could have argued to the committee that such documents were unreliable if he so chose. Mr. Daneshvar's point of error as to the hearsay documents is denied.

Likewise, the admission of the West Virginia Supreme Court cases of North v. Board of Regents into evidence was not improper or illegal. Mr. Daneshvar's attorney argued that the two cases of North v. Board of Regents required the hearing committee to allow him the right to voir dire the panel prior to the commencement of the hearing and then, within the context of the same hearing, argued that it is improper for the hearing committee to examine the very cases upon which he argued. This cannot be allowed. Mr. Daneshvar's point of error as to the West Virginia Court Cases on North v. Board of Regents is denied.

As to the admission of an article from the Chronicle of Higher Education, this was not improper as long as the hearing committee felt that it had some relevance to the matter. Assumedly, the relevance of the article was concerned with the policy and precedent at stake in terms of the appropriate sanction to levy. Attorney Vannoy was evidently trying to point out the perils of lenient sanctions in cases of academic dishonesty. Once again, Mr. Daneshvar's objection would go to the weight of the evidence rather than to its admissibility. Mr. Daneshvar's attorney should have made an argument against the document's validity in his closing statement if he felt that the contents of the article were somehow invalid. Mr. Daneshvar's assignment of error as to the article from the Chronicle of Higher Education is denied.

7) Mr. Daneshvar submits as points of error that his attorney submitted instructions and interrogatories to the Committee which were refused and that such refusal to consider the instructions and interrogatories would have benefited the committee in governing their deliberations by establishing, among other things, that the committee was being governed by the standard of clear and convincing evidence.

Mr. Daneshvar's attorney tries in his assignments of error to take an administrative hearing and turn it into a state or federal court forum, by attempting to submit documents, which seem by description, to be similar to jury instructions and interrogatory verdict forms.

Such documents are the tools of formal judicial settings and have no place in West Virginia University's informal administrative hearings. Mr. Daneshvar's attorney had the opportunity, in his closing argument, to argue what, in his opinion, would have benefited and helped the committee in governing their deliberations and the appropriate standards of proof which govern thew committee. Mr. Daneshvar's assignments of error pertaining to interrogatories and instructions are denied.

8) Mr. Daneshvar assigns as a point of error that the University failed to present sufficient evidence upon which as decision could be based by clear and convincing evidence as required by section 1.5.3 of the Student Code.

To the contrary, it was reasonable as a matter of clear and convincing evidence that the committee could make a finding that Mr. Daneshvar intentionally testified under oath that he had not been accused of cheating previously, especially given Mr. Daneshvar's rather questionable explanation about why he testified under oath that he had not been previously accused. Mr. Daneshvar's point of error as to the insufficiency of the evidence is denied.

9) Mr. Daneshvar assigns as a point of error the fact that the hearing committee did not make sufficient and complete Findings of Fact so as to allow a sufficiently intelligent appellate review. Mr. Daneshvar also alleges that the decision returned by the Committee is inconsistent and ambiguous and does not set forth sufficient Conclusions of Law, but only conclusions unsupported by factual testimony and findings.

The hearing committee: 1) found three specific Findings of Fact, 2) found that the three Findings of Fact indicated two specific violations of the Student Code, and 3) levied specific sanctions as to punishment for particular violations of the Student Code.

The hearing committee could have indeed provided more Findings of Fact if it had so wished. However, the Findings of Fact which it did provide are for the most part very specific and identify in a very particularized manner its most crucial Findings. A review of the Findings of Fact and the Conclusions of the panel and the sanctions levied, in combination with the transcript of the August 22, 1991 hearing along with the documents entered into evidence at the hearing, reveals that there is more than sufficient information upon which to base this appeal opinion.

However, even though there is sufficient overall information provided upon which to base this appeal opinion, there is indeed a problem with sufficiency in a portion of the hearing committee's Findings of Fact, Conclusions and correlative Sanctions. Finding of Fact #1 indicates that Mr. Daneshvar presented false and incomplete data for admission to the West Virginia University School of Dentistry, but further goes on to say that the hearing committee cannot find that this was done so intentionally. The committee found that Finding of Fact #1 was a violation of academic dishonesty under section 3.1.1.3.3.c and imposed a sanction of probation for one academic year for this infraction. This is a problematic part of the hearing committee's decision.

One of the definitions of academic dishonesty provided in the Student Code states as follows: "...presenting false date or intentionally misrepresenting one's records for admission, registration, or withdrawal from the University or from a University course." See section 3.1.1.3.3.c of the Student Code. Section 3.1.1.3.3.c is a subsection which appears under the general heading of "Academic Dishonesty" found at section 3.1.1.3 of the Student Code.

The question here presented requires an analysis of what the Committee meant by "false data." In making this analysis one must examine the nature of the policy in question and the Findings and Conclusions stated by the hearing committee. The word "false" has two distinct and well recognized meanings: 1) intentionally or knowingly or negligently untrue, and 2) untrue by mistake or accident, or honestly after the exercise of reasonable care. Black's Law Dictionary, 5th Ed. at 540. The phrase, "presentation of false data" when considered along with the general heading "Academic Dishonesty" would seem to point toward a conclusion that requires some intentional or negligently untrue act. Stated another way, how could something fall under the general heading of "Dishonesty" if it were not intentional or at least negligently untrue?

An examination of the hearing committee's application of the Student Code reveals that Finding of Fact #1 indicates that information included in Mr. Daneshvar's application was false. The hearing committee also stated it could not find that Mr. Daneshvar's presentation of false information was intentional; which means that the committee must interpret section 3.1.1.3.3.c of the Student Code to mean that unintentional but negligent presentation of "false data"

falls within the definition of academic dishonesty.

As can be seen from the definition of the word "false," it was not unreasonable for the hearing committee to interpret section 3.1.1.3.3.c of the Student Code to mean that one who presented '"false data" on his or here application for admission could be found guilty of academic dishonesty, regardless of whether such information was submitted intentionally or negligently. However, in this instance the hearing committee failed to indicate whether Mr. Daneshvar had acted negligible or whether he had merely made an honest mistake after the exercise of reasonable care.

Section 3.5.2.6.4 of the Student Code provides that only decisions by the University Committee on Student Rights and Responsibilities dealing with suspension or dismissal may be appealed to the President or his or her designee. However, even though Mr. Daneshvar has no technical right to appeal the sanction of one year probation for Finding of Fact #1 and Conclusion of Law #1, this office has the authority to review the committee's decision on its own motion. This office finds that the hearing committee's Finding of Fact #! is insufficient to support Conclusion #1.

As to the sanction of academic dismissal, the hearing committee had sufficient information with which to reasonably make a Finding of Fact that Mr. Daneshvar did intentionally testify under oath that he had not been accused of cheating previously (Finding of Fact #3). The committee also had sufficient information with which to reasonably reach a conclusion that Finding of Fact #3 constituted a violation of academic dishonesty under sections 3.1.1.3.3.f and 2.3.1.a.2 of the Student Code.[1]

There was sufficient information to find from a standard of clear and convincing evidence that Mr. Daneshvar intentionally testified under oath that he had not been accused of cheating previously. Granted, the hearing committee's formal Finding of Fact #3 does not include the word "intentional." But given the hearing committee's Findings of Fact, Conclusions, and Sanctions, the conclusion can safely be made that the hearing committee found that MR. Daneshvar intentionally misrepresented under oath that he had previously been accused of cheating.

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1 Even though the sanction of probation and Conclusion #1 were inconsistent with Finding of Fact #1 as stated above, this does not mean that the sanction of academic dismissal for the violation of the Student Code found in Conclusion #2 concerning Finding of Fact #3 was inconsistent or ambiguous.

This is further supported by the fact that the hearing committee, in Finding of Fact #1, specifically indicated that it could not find that Mr. Daneshvar presented false and incomplete data for admission purposes "intentionally." The lack of the same language in Finding of Fact #3 supports this implication. Also, the language of the definitional portions of the Student Code concerning academic dishonesty under section 3.1.1.3.3.f and 2.3.1.a.2 specifically speak to "dishonesty" and "knowingly" furnishing false information. The language of the two definitional sections just cited clearly indicate violations of an intentional nature whereas the language of the definitional section of academic dishonesty under section 3.1.1.3.3.c of the Student Code (in regard to Finding of Fact #1) could conceivably be construed to deal with situations other than intentional ones. Therefore, Mr. Daneshvar's point of error concerning the sanction of academic dismissal is denied.

10) In #10, Mr. Daneshvar assigns several points of error which are mostly repetitive in nature. Generally, there is no evidence in the record that the hearing committee was hostile nor that it appeared to be there solely for the purpose of disposing of Mr. Daneshvar, as Mr. Daneshvar claims. The arguments made in paragraph #10 by Mr. Daneshvar's attorney are again mostly formal evidentiary objections which should have been addressed to the weight of the evidence rather than to its admissibility. There is nothing in the record which indicates that the committee was prejudiced in any way. Nor is there anything to indicate that Mr. Daneshvar did not receive a fair and impartial hearing. In fact, the hearing committee went above and beyond the procedures which it was required to afford to Mr. Daneshvar. As above stated, Mr. Daneshvar did not have an absolute right to be represented by an attorney at the hearing and the committee, by allowing Mr. Daneshvar to be represented by counsel, further insured over and beyond the minimum due process requirements that Mr. Daneshvar was afforded a proper hearing.

CONCLUSIONS

This office finds that the hearing panel of the Committee on Student Rights and Responsibilities Conclusion #1 which states: "Finding of Fact #1 is a violation of academic dishonesty, section 3.1.1.3.c" is inconsistent with Finding of Fact #1 which indicated that they could

not find that the presentation of false and incomplete date for admission to the School of Dentistry was intentional. Therefore, the sanction of probation for one academic year for academic dishonesty is **OVERTURNED.**

The hearing panel's sanction of academic dismissal from the West Virginia University School of Dentistry for academic dishonesty by virtue of violations of sections 3.1.1.3.3.f and 2.3.1.a.2 of the Student Code are proper. There was sufficient information presented at the August 22, 1991 hearing in the form of oral and documentary evidence with which the panel could reasonably find, by a standard of clear and convincing evidence, that Mr. Daneshvar had intentionally lied while under oath at a previous University hearing.

The situation that is presented to this office on appeal is one where a student has been convicted for a second time of academic dishonesty while still serving under probation for a first offense of academic dishonesty. The first offense of academic dishonesty for which Mr. Daneshvar was under probation is a relevant consideration in determining a proper sanction.

Any student who has enrolled in a professional school at West Virginia University just by the nature of the vocation which he or she wishes to pursue, subject him or herself to a high degree of moral and ethical scrutiny. West Virginia University's professional schools exist not only to render an academic education for the benefit of its students, but also to help insure that the moral and ethical integrity of the professions which its students will enter into is protected.

In light of the foregoing, this office **AFFIRMS** the sanction of academic dismissal for violation of the West Virginia University Student Code sections 3.1.1.3.3.f and 2.3.1.a.2.

As a result of the above rulings, Mr. Daneshvar's Motions to"... Award Him Another Hearing..." and to "...Reinstate Him to His Former Position" are both **DENIED**.

Neil S. Bucklew, President
West Virginia University by
/s/ Jon A. Reed
Executive Officer and
General Counsel

PENDING IN THE OFFICE OF THE PRESIDENT OF WEST VIRGINIA UNIVERSITY

Jon A. Reed
Executive Officer and
General Counsel
Office of the President
West Virginia University

IN RE: JAMSHID DANESHVAR

MOTION OF JAMSHID DANESHVAR THAT THE PRESIDENT SET ASIDE THE DECISION OF THE COMMITTEE AND AWARD HIM ANOTHER HEARING, OR IN THE ALTERNATIVE, REINSTATE HIM TO HIS FORMER POSITION

Submitted December 20, 1991

By David L. Solomon
Attorney for Jamshid Daneshvar
330 Chestnut Street
Morgantown, WV 26505

MOTION OF JAMSHID DANESHVAR THAT THE PRESIDENT SET ASIDE THE DECISION OF THE COMMITTEE AND AWARD HIM ANOTHER HEARING, OR IN THE ALTERNATIVE, REINSTATE HIM TO HIS FORMER POSITION

I hereby assign as prejudicial errors the following which occurred during the proceedings beginning April 23, 1991 until the date of the hearing held on August 22, 1991, which errors are as follows:

1) Dr. W.R. McCutcheon, Associate Dean of the School of Dentistry, violated my client's rights when he had him sign an authorization to obtain the release of his academic records on April 23, 1991 when he knew that Mr. Daneshvar was represented by counsel and misrepresented to him the purport of such release.

2) On May 7, 1991, my client received charges against him by the School of Dentistry and a hearing was scheduled for May 27, 1991. By letter dated May 20, 1991, I advised my client that I was unavailable on May 27th due to a civil trial in The Circuit Court of Manogalia County, and advised him to seek a postponement. Dr. Overberger refused to grant him a postponement and the Second Year Academic Standards Committee met without my client attending or being represented by counsel, and delivered their decision of expulsion. On June 3, 1991, Dean Robert W. Biddington accepted the recommendation of the Second Year Academic Standards Committee and expelled Mr. Daneshvar.

Mr. Daneshvar should have had a postponement until another date so as to allow him to be represented by counsel. This was the loss of his valuable right to be represented by counsel at such a critical hearing.

3) On July 29, 1991, Attorney Solomon wrote a letter to Thomas S. Sloane, Ph.D., Assistant Dean/Student Life, and asked that Mr. Daneshvar be given a due process hearing before the Committee. In this letter, Mr. Daneshvar's attorney asked for an unbiased Committee free from bias and prejudice and asked for the right to voir dire members of the Committee and there were other requests made to insure Mr. Daneshvar's rights.

Also, it was assumed that Mr. Daneshvar would be entitled to appear before a University Committee on student rights and responsibilities, which would be a five-person committee pursuant to 1.5.1

of the **Student Code** when, in fact, at the hearing on August 22, 1991, only three members of the committee appeared.

The **Student Code** provides that the committee on Student Rights and Responsibilities should consist of five members when, in fact, only three members heard Mr. Daneshvar's appeal, which is contrary to the **Student Code**. This denied Mr. Daneshvar any strikes to which he was entitled.

Page 4 of the Transcript shows that voir dire consisted of one question to the Committee, which was, "Do you have any prior knowledge about the student charged which will impair your ability to render an impartial decision"?

ON Page 6 of the Transcript, again, Attorney Solomon moved to have the right to voir dire the Committee, which was denied. Accordingly, Attorney Solomon filed respondent's "Exhibit A", which was 55 voir dire questions submitted on behalf of my client which I wanted asked of each member of the Committee.

On Page 9 of the Transcript of the hearing, Attorney Solomon objected to the three-person Committee, which was denied and which is the singular most prejudicial error committed against Mr. Daneshvar. Without voir dire, there can be no assurance that the hearing tribunal is free from bias and prejudice. I determine that the denial to voir dire is sufficient to reverse the decision of the Committee. In the case of **North vs. Bd. of Regents**, decided April 12, 1985, which is the second North case, 332, S.E.2d, 141, Syllabus 1, it is provided as follows:

> Before a student can be permanently expelled from a State-supported university, he is entitled to the following due process rights:....an unbiased hearing tribunal;

and on Page 145 of the **North** case, Chief Justice Neely stated,

> Perhaps the most significant factor, however, in refusing relief to the petitioner, based upon his challenge to the hearing tribunal, is the fact that at the hearing, counsel for the petitioner conducted extensive voir dire of each of the committee members and

concluded his inquiry by withdrawing any objection to those members hearing the evidence and making appropriate recommendations.

4) There were inconsistent and erroneous charges brought against my client by letter dated May 7, 1991 by Dean Biddington and the official charges brought by Dean Sloane on August 14, 1991, are inconsistent and erroneous and accordingly, Mr. Daneshvar was tried on incompatible charges. The charges allege both student and academic offenses. Mr. Daneshvar was only found guilty of testifying under oath that he had not been accused of cheating previously and the committee imposed academic dismissal. This penalty is inconsistent with the Student Code and should not be allowed to stand.

5) The atmosphere created by Attorney Vannoy, Associate General Counsel for the Office of the President, was one of hostility and animosity and due to his prestigious position, repeatedly objected, interrupted and belittled Mr. Daneshvar's counsel and made it appear before the Committee that they were in some fashion being duped or tricked by this "downtown lawyer". The Transcript of the hearing, which numbers 184 pages, is replete with Mr. Vannoy's interruptions and objections and numerous prejudicial remarks made before the Committee. Further, Attorney Vannoy repeatedly made use of hearsay testimony and evidence assuring Dr. Sloane that such was proper, all of which was prejudicial to Mr. Daneshvar.

(a) Attorney Vannoy called and presented testimony form John Erdeljac which was not relevant or material to the issues in the proceeding. This was nothing more than testimony concerning how Mr. Daneshvar came to be identified as having previously attended Case Western University and then proceeded to illicit from this student why it was important for the School of Dentistry to know whether an applicant has cheated or not, all of which was improper.

(b) Attorney Vannoy then called Dr. Todd Lewis and then proceeded to illicit testimony based upon his opinion on the ethics and professionalism of dentistry.

(c) The next witness called by Attorney Vannoy was Rodney Powers who is employed at the School of Dentistry as an instructor and proceeded to allow him to give his opinion as to what the Admissions Committee does or does not do, again, in an attempt

to prejudice the Committee against Mr. Daneshvar.

(d) Attorney Vannoy then called Dr. William McCutcheon who was allowed to interpret and give his opinion on various documents which documents speak for themselves and should have been interpreted by the Committee.

On Page 59 of the Transcript, Dr. McCutcheon was allowed to testify that he "perceived" that false statements had been made by Mr. Daneshvar. Further, Dr. McCutcheon was allowed to testify as to what the transcript of the pages of the hearing said, all of which was readily apparent and obvious to the Committee.

On Page 72 of the Transcript, Dr. McCutcheon was allowed to testify as to hearsay based upon "Exhibit No. 12" and was allowed to relay a telephone conversation held with another individual in the State of Ohio, all of which was hearsay and not subject to cross-examination.

On cross-examination of Dr. McCutcheon, Page 76, it was revealed that Dr. McCutcheon had telephoned Case Western Reserve during a recess and then testified to such in his direct testimony.

(e) Attorney Vannoy then called Dr. James Overberger solely for the purpose of eliciting prejudicial testimony against Mr. Daneshvar. Dr. Overberger testified that he did not grant a postponement of the Second Year Academic Standards Committee because at [Page 84], "It was my considered opinion at that time that the allegations were so serious that I owed a responsibility to the School of Dentistry to proceed with the meeting", and accordingly, he denied Mr. Daneshvar's request for a postponement to enable him to have an attorney present.

Mr. Vannoy then elicited testimony from Dr. Overberger concerning a Circuit Court hearing which occurred prior to this hearing and even after Dean Sloane ruled that it was not relevant, Attorney Vannoy continued to state to the Committee what occurred (See Page 87). Attorney Vannoy then attempted to introduce testimony from Dr. Overberger as an expert on academics dishonesty, Page 88, over the objection of Attorney Solomon.

On cross-examination, it was revealed that Dr. Overberger arbitrarily scheduled the Second Year Academic Standards committee hearing for May 22, 1991 and Mr. Daneshvar did not appear nor did any body appear on his behalf.

(f) Attorney Vannoy then called Dr. David Z. Morgan

solely for the purpose of expounding to the Committee as to what had been proper decisions in other cases, and what was appropriate punishment and mentioned, the North cases and was allowed to prejudice the Committee, and in effect, tell the Committee that expulsion should be ordered. This was highly prejudicial for Dr. Morgan to expound to the Committee the results in both of the cases of North vs. Bd. of Regents.

(g) Attorney Vannoy then called Dr. William McCutcheon as a witness for the second time and again asked Dr. McCutcheon to speak as to the appropriateness of the sanction imposed by Dean Biddington.

(h) The Committee improperly heard from Dr. Overberger, Dr. McCutcheon and Dr. Morgan testimony as to the appropriate punishment, all of which was improper since punishment is within the province of the Committee.

6) there were improper and illegal exhibits introduced to be considered by the Committee. There were exhibits introduced which were hearsay from Case Western University, some of which documents were not even signed or authenticated in any fashion. Exhibits 19 and 20 were the Supreme Court cases on **North vs. Bd. of Regents**, which the Committee was allowed to review, which was illegal and improper. Exhibit 21 was an editorial from the chronicle of higher education entitled "Message To Students: If You Have A Lawyer Handy, Go Ahead And Cheat Like Crazy", all of which was an open editorial which was prejudicial and improper to be seen and read by the Committee.

7) Attorney Solomon submitted instructions on behalf of Mr. Daneshvar to the Committee setting forth the proper application of the law on the case which were refused by the committee, and on Page 8 of the Transcript, Attorney Solomon moved to put the proposed instructions in the file and made a part of the record. These instructions would have been of benefit and help to the Committee in governing their deliberations.

Further, interrogatories were submitted to the Committee which were refused which would have established that the Committee was being governed by clear and convincing evidence which is the standard imposed by the **Student Code** in setting forth the penalties that were being imposed.

8) The University failed to present sufficient evidence to

the committee upon which a decision could be based as it pertains to clear and convincing evidence required by 1.5.3 of the **Student Code** which provides that "all findings of fact and action shall be based on clear and convincing evidence"

There was insufficient evidence to sustain the decision as Mr. Daneshvar testified under oath that he had not been accused of cheating previously and the Transcript of the November 28, 1990 hearing is ambiguous in this respect and subject to be interpreted in various ways. The evidence does not rise to the level of "clear and convincing evidence" against Mr. Daneshvar and the decision of the Committee dated August 23, 1991 does not state that the Committee did, in fact, find him guilty of testifying under oath previously be clear and convincing evidence.

9) The **Student Code** provides that the Committee shall prepare findings of fact and conclusions of law. This has not been following and the decision of the committee violates this requirement in that the Committee did not make sufficient and complete findings of fact so as to allow an appellate review sufficiently to enable an intelligent review. The decision returned by the Committee is inconsistent and ambiguous and does not set forth sufficient findings of fact but only conclusions unsupported by factual testimony and findings.

10) Generally, and overall, Mr. Daneshvar did not get a fair hearing as required by both of the cases of **North vs. Bd. of Regents** because the Committee was hostile and belligerent and appeared to be there solely for the purpose of disposing of Mr. Daneshvar. The Committee was allowed to hear evidence of a past infraction of which Mr. Daneshvar was acquitted in November, 1990 when the Committee was allowed to hear of a former charge against him of cheating for which he was exonerated.

The above errors committed by the University and the Committee made it impossible for Mr. Daneshvar to receive a fair and impartial hearing. Mr. Daneshvar was forced to accept a three-person Committee and was denied his right to learn anything about each of the individuals through voir dire and accordingly, Mr. Daneshvar and his counsel knew absolutely nothing about the persons serving on the Committee and basically whether or not they could fairly judge him.

For these errors committed, Mr. Daneshvar would ask that the

President reverse the decision of the Committee and reinstate Mr. Daneshvar to his former position, or in the alternative grant him another hearing which is fair and which follows the due process mandates as provided by the **Student Code** and the law of the State of West Virginia.

Respectfully submitted this 20th day of December, 1991.

/s/ David L. Solomon, Attorney
for Jamshid Daneshvar

IN THE SUPREME COURT
OF APPEALS OF WEST VIRGINIA

JAMSHID DANESHVAR,

Applicant,
VS Civil ACTION NO. 92-Misc.-432

UNIVERSITY OF WEST VIRGINIA,
BOARD OF TRUSTEES,

Respondent.

FROM THE CIRCUIT COURT OF KANAWHA COUNTY

PETITION FOR APPEAL BY JAMSHID DANESHVAR

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III.

ASSIGNMENT OF ERRORS RELIED UPON AND THE RULINGS THEREON

I. PETITIONER DENIED HIS RIGHT TO FIVE MEMBERS FROM THE UNIVERSITY COMMITTEE ON STUDENT RIGHTS AND RESPONSIBILITIES AND DENIED HIS RIGHT TO TWO STRIKES THEREOF.

II. PETITIONER DENIED ANY RIGHT OF VOIR DIRE OF A THREE-MEMBER COMMITTEE.

III. PETITIONER DENIED A FAIR HEARING PURSUANT TO HIS DUE PROCESS RIGHTS.

IV. COMMITTEE PREPARED AND FILED INADEQUATE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

POINTS AND AUTHORITIES RELIED UPON AND DISCUSSION OF THE LAW

(1) Petitioner was denied a five-member Committee pursuant to West Virginia University Code of Student Rights and Responsibilities, Section 1, which provides entitlement to a five-member Committee; also, such provides for an opportunity to strike the maximum of two members.

(2) Petitioner was denied his right of voir dire of the three-member Committee.

(a) **North v. W.Va. Bd. of Regents**, 160 W.Va. 248, Supreme Court of W.Va., March 29, 1977, provides that before a student can be permanently expelled from a State supported university, he is entitled to the following due process rights: a formal written notice of charges: sufficient opportunity to prepare to rebut the charges; opportunity to have retained counsel at any hearings on the charges, to confront his accusers, and to present evidence on his own behalf; an unbiased hearing tribunal; and an adequate record of the proceedings.

(b) **North v. W.Va. Bd. of Regents**, 332 S.E.2d 141, Su-

preme Court of W.Va., April 12, 1985. This case upheld the due process requirements of the previous North decision and further went on to state on page 145 thereof, the following:

> Perhaps the most significant factor, however, in refusing relief to the petitioner, based upon his challenge to the hearing tribunal, is the fact that at the hearing, counsel for the petitioner conducted extensive voir dire of each of the committee members and concluded his inquiry by withdrawing any objection to those members hearing the evidence and making appropriate recommendations.

Both of the **North** cases recognized the right of a student to be accorded full due process hearing rights, the most significant of which is an unbiased hearing tribunal. In the second North case decided on April 12, 1985, the Court affirmed the decision of the lower court and stated that the most significant factor in sustaining the lower court was the petitioner's right to voir dire each member of the Committee. This right was denied petitioner.

IV.
PETITIONER DENIED A FAIR HEARING PURSUANT TO HIS DUE PROCESS RIGHTS

North v. W.Va. Bd. of Regents, 160 W.VA. 248, Supreme Court of W.Va., March 29, 1977, recognized the right of a student to be accorded full due process hearing rights, the most significant of which is an unbiased hearing tribunal.

North v. W.Va. Bd. of Regents, 332 S.E.2d 141, Supreme Court of W.Va., April 12, 1985, affirmed the decision of the lower court and stated that the most significant factor in sustaining the lower court was the petitioner's right to voir dire each member of the Committee. This right was denied petitioner.

V.

COMMITTEE PREPARED AND FILED INADEQUATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

(a) The Code of Student Rights And Responsibilities provides that the Committee shall prepare Findings of Fact and Conclusions after a hearing. The Findings of Fact and preparation of Conclusions is inadequate and fails to adequately disclose the facts relied upon by the Committee, their deliberations and their findings in this matter.

VI.

CONCLUSION

The petitioner was not given a fair hearing in this matter by the Committee for failure to observe his hearing due process rights, which included his right to an unbiased hearing Committee which could only be uncovered and ascertained by the implementation of his right to voir dire each Committee member.

A reading of the transcript will disclose the hostile atmosphere in the rendition of hearsay testimony, newspaper articles and telephone conversations which denied the petitioner a fair hearing.

PRAYER

Your petitioner prays that the decision of the Office of the President and the decision of The Circuit Court of Kanawha County be reversed and that the petitioner be accorded a new hearing herein.

JAMSHID DANESHVAR
By Counsel

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